

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES A. PHILLIPS and TENNESSEE VALLEY AUTHORITY,
GALLATIN FOSSIL PLANT, Gallatin, Tenn.

*Docket No. 96-1255; Submitted on the Record;
Issued March 6, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

The Board has duly reviewed the case record in the present appeal and finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The Office accepted appellant's claim for a left shoulder strain, herniated cervical disc and laminectomy. By decision dated December 8, 1994, the Office awarded appellant a schedule award for a 4 percent permanent impairment to the left upper extremity covering the period July 27 to October 22, 1994. By letter dated December 7, 1995, appellant requested reconsideration of the Office's decision and submitted additional evidence consisting of medical reports from Dr. Verne E. Allen, a Board-certified neurological surgeon, dated May 15 and June 9, 1993, and June 23 and October 24, 1995, from Dr. Leon H. Ensalada, a Board-certified anesthesiologist, dated December 13, 1994 and January 17, February 2 and 16, and March 1, 1995, from Anslie Weeks, a physical therapist, dated December 2, 1994, consisting of a functional capacities assessment from Dr. Harold P. Smith, a Board-certified neurological surgeon, dated November 17, December 17 and 31, 1992 and some miscellaneous documentation dated November 22, 1994, June 22 and July 12, 1993 which either diagnosed appellant's condition or described his restrictions.

By decision dated January 17, 1996, the Office denied appellant's reconsideration request, finding that the evidence submitted was cumulative in nature and did not warrant further review of the merits of her claim.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed the appeal with the Board on March 13, 1996, the only decision properly before the Board is the January 17, 1996 decision denying appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.³ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵ Evidence that does not address the particular issue involved, in this case whether appellant sustained greater than a four percent permanent impairment to his upper left extremity, does not constitute a basis for reopening the case.⁶

The medical evidence appellant submitted in support of his reconsideration request chronicles the treatment and status of his condition, provides diagnoses and describes his restrictions. None of the reports, however, provide an assessment of the degree of appellant's impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1994). The Board requires that a physician properly use the A.M.A., *Guides*, in assessing the extent of an appellant's impairment.⁷ Moreover, the December 2, 1994 report by a physical therapist is not probative as a physical therapist is not a "physician" within the meaning of the Act.⁸ Because none of the medical reports provide an impairment rating of appellant's condition pursuant to the A.M.A., *Guides*, the medical evidence appellant submitted is not relevant.

Appellant has not established that the Office abused its discretion in its January 17, 1996 decision by denying appellant's request for a review on the merits of its December 8, 1994 decision under section 8128(1) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. § 8101 *et seq.*

³ 20 C.F.R. § 10.138(b)(1) and (2).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁶ *Richard L. Ballard*, note 5 at 150; *Edward Mathew Diekemper*, 31 ECAB 224, 225 (1979).

⁷ *See Paul R. Evans*, 44 ECAB 646, 651 (1993); *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

⁸ *See Barbara J. Williams*, 40 ECAB 649, 657 (1988).

previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

Accordingly, the decision of the Office of Workers' Compensation Programs dated January 17, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 6, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member